Foreword

Artificial intelligence is hot. We know that because it has got its own abbreviation: AI, displacing Artificial Insemination's monopoly. Not a day passes without one seeing or hearing AI being written about or discussed in the media and technical press.

So what is AI? (Something to do with computers and robots.) What can it do? Does it do it well? If not, when will it? Ever? (Soon, we are told, depending on whether your measure is years or decades.) How does or will it affect non-AIs, aka humans and other sentient beings? Should we non-AIs be encouraging its explosion – in either sense of the word?

The academy, of course, has joined in the discussion. Engineers, sociologists, cultural theorists, and the rest are all weighing in. So too are the lawyers.

There wasn't that much written five or so years ago when Aviv Gaon, a legal scholar with a bent towards intellectual property law (IP), started on his doctoral studies. He was curious to know how AI intersected and ought to intersect with IP, particularly copyright law. After all, AI was already doing much of what traditionally fell under IP: drawing, painting, writing, composing, compiling, performing. Or was it really 'doing' that? What does it mean today to draw, paint, compile, etc., or to be an artist, author, or composer? Is AI really one? Or is there someone (or something) behind the AI who (or which) better deserves that description?

Law tends to look backwards. It deals better with the past than the future, especially when it comes to the new-fangled. It had enough trouble at the turn of the 20th century figuring out what to do with that new invention, the sound recording. With some fanfare it announced that anyone's music could freely be reproduced because only sheet music was 'music' and piano rolls clearly didn't look like sheets and so weren't copies. Music publishers of course cried foul and legislatures stepped in to deem recordings reproductions, while adding that anybody could make them so long as they paid the music copyright owner something. And who knows, a penny or two might even trickle down to the composer.

We have progressed a little, legally speaking, with AI. We can today say that something produced using AI is like a manuscript once written with the aid of a pen or a typewriter. Its producer is the author and AI is just the mechanical means that puts the author's ideas into print. But what happens when AI is more autonomous than that, and the writer – the person who set the AI off

on its task – cannot recognize what the AI has wrought as having anything to do with them? Is the writer still the, or even ‘an’, author? Where does the individual who created the AI’s operating system come in? More radically, can a machine be an author? Is it ‘human’ enough, or does non-humanity even matter? Has it done anything ‘original’ or ‘intellectual’? How long will copyright last when duration is tied to a period of years after the author’s death? Will courts recognize – as AP Herbert’s fictitious judge did in the continuation of his *Misleading Cases* (1964) – that a computer can sue and be sued? (One suspects recognition will not come quickly, if the cool reception given so far to attempts to patent something in the name of its alleged AI inventor is any inkling.)

But that is just the law of today. What is tomorrow’s law to be? Should it encourage how AI gathers data and manipulates them into something new, interesting, and perhaps even beneficial to humans? The law of today and of tomorrow are among the questions Dr Gaon explores in the pages that follow: how AI came to be, how it may be defined, where it may be going, and whether, and if so how, IP law should embrace it.

I shall not be the spoiler who summarizes the outcome of his exploration. It is enough to say that what follows is a thorough, even brilliant, exposé of the subject. One may not agree with every word, but the case Dr Gaon makes is persuasive and one will come away – unlike the apocryphal hapless judge – not only better informed but also considerably wiser.

I was privileged to be a member of Dr Gaon’s PhD committee and examining board at Osgoode Hall Law School and so saw at close quarters the gestation and birth of the work that forms the backbone of this book. I can heartily commend it to anyone wanting a better understanding of why legal protection for AI matters and how best to shape it.

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